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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 217

01/31/2013 Authored by Winkler
The bill was read for the first time and referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to civil actions; regulating defamation actions; providing for requests
1.3 for corrections or clarifications; proposing coding for new law as Minnesota
1.4 Statutes, chapter 553A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[553A.01] DEFINITIONS.**

1.7 Subdivision 1. **Terms.** For purposes of sections 553A.01 to 553A.10, the terms
1.8 defined in subdivisions 2 to 5 have the meanings given them.

1.9 Subd. 2. **Defamatory.** "Defamatory" means tending to harm reputation.

1.10 Subd. 3. **Economic loss.** "Economic loss" means special, pecuniary loss caused by
1.11 a false and defamatory publication.

1.12 Subd. 4. **Person.** "Person" means an individual, corporation, business trust, estate,
1.13 trust, partnership, association, joint venture, or other legal or commercial entity. The term
1.14 does not include a government or governmental subdivision, agency, or instrumentality.

1.15 Subd. 5. **Publish.** "Publish" means to communicate to another person.

1.16 Sec. 2. **[553A.02] APPLICATION.**

1.17 Subdivision 1. **Claims for relief; coverage.** Sections 553A.01 to 553A.10 apply to
1.18 any claim for relief, however characterized, for damages arising out of harm to personal
1.19 reputation caused by the false content of a publication that is published after the effective
1.20 date of sections 553A.01 to 553A.10. Sections 553A.01 to 553A.10 do not create or
1.21 recognize any new claim for relief, expand any existing claim for relief, or change or
1.22 abolish any existing defense.

2.1 Subd. 2. **Publications; coverage.** Sections 553A.01 to 553A.10 apply to
 2.2 all publications, including writings, broadcasts, oral communications, electronic
 2.3 transmissions, or other forms of transmitting information.

2.4 **Sec. 3. [553A.03] REQUEST FOR CORRECTION OR CLARIFICATION.**

2.5 Subdivision 1. **Conditions to maintaining action.** A person may maintain an
 2.6 action for defamation only after:

2.7 (1) the person has made a timely and adequate request for correction or clarification
 2.8 from the defendant; or

2.9 (2) the defendant has made a correction or clarification.

2.10 Subd. 2. **Timing.** A request for correction or clarification is timely if made within
 2.11 the period of limitation for commencement of an action for defamation. However, a
 2.12 person who, within 90 days after knowledge of the publication, fails to make a good-faith
 2.13 attempt to request a correction or clarification may recover only provable economic loss.

2.14 Subd. 3. **Adequacy.** A request for correction or clarification is adequate if it:

2.15 (1) is made in writing and reasonably identifies the person making the request;

2.16 (2) specifies with particularity the statement alleged to be false and defamatory and,
 2.17 to the extent known, the time and place of publication;

2.18 (3) alleges the defamatory meaning of the statement;

2.19 (4) specifies the circumstances giving rise to any defamatory meaning of the
 2.20 statement which arises from other than the express language of the publication; and

2.21 (5) states that the alleged defamatory meaning of the statement is false.

2.22 Subd. 4. **Service of summons and complaint as adequate request.** In the absence
 2.23 of a previous adequate request, service of a summons and complaint stating a claim for
 2.24 relief for defamation and containing the information required in subdivision 3 constitutes
 2.25 an adequate request for correction or clarification.

2.26 Subd. 5. **Tolling of period of limitation.** The period of limitation for
 2.27 commencement of a defamation action is tolled during the period allowed in section
 2.28 553A.06, subdivision 1, for responding to a request for correction or clarification.

2.29 **Sec. 4. [553A.04] DISCLOSURE OF EVIDENCE OF FALSITY.**

2.30 Subdivision 1. **Right to request.** A person who has been requested to make
 2.31 a correction or clarification may ask the requester to disclose reasonably available
 2.32 information material to the falsity of the alleged defamatory statement.

3.1 Subd. 2. **Failure to disclose.** If a correction or clarification is not made, a person
 3.2 who unreasonably fails to disclose the information after a request to do so may recover
 3.3 only provable economic loss.

3.4 Sec. 5. **[553A.05] EFFECT OF CORRECTION OR CLARIFICATION.**

3.5 If a timely and sufficient correction or clarification is made, a person may recover
 3.6 only provable economic loss, as mitigated by the correction or clarification.

3.7 Sec. 6. **[553A.06] TIMELY AND SUFFICIENT CORRECTION OR**
 3.8 **CLARIFICATION.**

3.9 Subdivision 1. **Determination of timeliness.** A correction or clarification is timely
 3.10 if it is published by the later of the following:

- 3.11 (1) before receipt of a request for correction or clarification; or
 3.12 (2) within 25 days after the receipt of the information disclosed pursuant to section
 3.13 553A.04, subdivision 1, or 45 days after receipt of a request for correction or clarification.

3.14 Subd. 2. **Determination of sufficiency.** A correction or clarification is sufficient if:

- 3.15 (1) it is published with a prominence and in a manner and medium reasonably likely
 3.16 to reach substantially the same audience as the publication complained of;
 3.17 (2) it refers to the statement being corrected or clarified and:
 3.18 (i) corrects or clarifies the statement;
 3.19 (ii) in the case of defamatory meaning arising from other than the express language
 3.20 of the publication, disclaims an intent to communicate that meaning or to assert its truth; or
 3.21 (iii) in the case of a statement attributed to another person, identifies the person and
 3.22 disclaims an intent to assert the truth of the statement; and
 3.23 (3) reasonable efforts have been made to communicate it to the person who has made
 3.24 the request for correction or clarification.

3.25 Subd. 3. **Medium.** For purposes of subdivision 2, clause (1), a correction or
 3.26 clarification is published in a medium reasonably likely to reach substantially the same
 3.27 audience as the publication complained of if it is published in a later issue, edition, or
 3.28 broadcast of the original publication. If a later issue, edition, or broadcast of the original
 3.29 publication will not be published within the time limits established for a timely correction or
 3.30 clarification, a correction or clarification is published in a manner and medium reasonably
 3.31 likely to reach substantially the same audience as the publication complained of if:

- 3.32 (1) it is timely published in a reasonably prominent manner:
 3.33 (i) in another medium likely to reach an audience reasonably equivalent to the
 3.34 original publication; or

4.1 (ii) if the parties cannot agree on another medium, in the newspaper with the largest
 4.2 general circulation in the region in which the original publication was distributed;

4.3 (2) reasonable steps are taken to correct undistributed copies of the original
 4.4 publication, if any; and

4.5 (3) it is published in the next practicable issue, edition, or broadcast, if any, of
 4.6 the original publication.

4.7 Subd. 4. **Agreement of the parties.** A correction or clarification is timely and
 4.8 sufficient if the parties agree in writing that is timely and sufficient.

4.9 Sec. 7. **[553A.07] CHALLENGE TO CORRECTION OR CLARIFICATION OR**
 4.10 **REQUEST FOR CORRECTION OR CLARIFICATION.**

4.11 Subdivision 1. **Required notice.** If a defendant in an action governed by sections
 4.12 553A.01 to 553A.10 intends to rely on a timely and sufficient correction or clarification,
 4.13 the defendant's intention to do so, and the correction or clarification relied upon, must be
 4.14 set forth in a notice served on the plaintiff within 60 days after service of the summons
 4.15 and complaint or ten days after the correction or clarification is made, whichever is later.
 4.16 A correction or clarification is deemed to be timely and sufficient unless the plaintiff
 4.17 challenges its timeliness or sufficiency within 20 days after the notice is served.

4.18 Subd. 2. **Required motion.** If a defendant in an action governed by sections
 4.19 553A.01 to 553A.10 intends to challenge the adequacy or timeliness of a request for
 4.20 correction or clarification, the defendant must set forth the challenge in a motion to declare
 4.21 the request inadequate or untimely served within 60 days after service of the summons and
 4.22 complaint. The court shall rule on the motion at the earliest appropriate time before trial.

4.23 Sec. 8. **[553A.08] OFFER TO CORRECT OR CLARIFY.**

4.24 Subdivision 1. **Manner and content.** If a timely correction or clarification is no
 4.25 longer possible, the publisher of an alleged defamatory statement may offer, at any time
 4.26 before trial, to make a correction or clarification. The offer must be made in writing to the
 4.27 person allegedly defamed by the publication, and:

4.28 (1) contain the publisher's offer to:

4.29 (i) publish, at the person's request, a sufficient correction or clarification; and

4.30 (ii) pay the person's reasonable expenses of litigation, including attorney fees,
 4.31 incurred before publication of the correction or clarification; and

4.32 (2) be accompanied by a copy of the proposed correction or clarification and the
 4.33 plan for its publication.

5.1 Subd. 2. **Acceptance.** If the person accepts in writing an offer to correct or clarify
 5.2 made pursuant to subdivision 1:

5.3 (1) the person is barred from commencing an action against the publisher based
 5.4 on the statement; or

5.5 (2) if an action has been commenced, the court shall dismiss the action against the
 5.6 defendant with prejudice after the defendant complies with the terms of the offer.

5.7 Subd. 3. **Nonacceptance.** A person who does not accept an offer made in
 5.8 conformance with subdivision 1 may recover in an action based on the statement only:

5.9 (1) damages for provable economic loss; and

5.10 (2) reasonable expenses of litigation, including attorney fees, incurred before the
 5.11 offer, unless the person failed to make a good-faith attempt to request a correction or
 5.12 clarification according to section 553A.03, subdivision 2, or failed to disclose information
 5.13 according to section 553A.04.

5.14 Subd. 4. **Determination of sufficiency.** On request of either party, a court shall
 5.15 promptly determine the sufficiency of the offered correction or clarification.

5.16 Subd. 5. **Determination of litigation expenses.** The court shall determine
 5.17 the amount of reasonable expenses of litigation, including attorney fees, specified in
 5.18 subdivision 1, clause (1), item (ii), and subdivision 3, clause (2).

5.19 **Sec. 9. [553A.09] SCOPE OF PROTECTION.**

5.20 A timely and sufficient correction or clarification made by a person responsible for
 5.21 a publication constitutes a correction or clarification made by all persons responsible
 5.22 for that publication other than a republisher. However, a correction or clarification that
 5.23 is sufficient only because of the operation of section 553A.06, subdivision 2, clause (2),
 5.24 item (iii), does not constitute a correction or clarification made by the person to whom
 5.25 the statement is attributed.

5.26 **Sec. 10. [553A.10] NONADMISSIBILITY OF CERTAIN EVIDENCE.**

5.27 Subdivision 1. **Requests.** The fact of a request for correction or clarification under
 5.28 sections 553A.01 to 553A.10, the contents of the request, and its acceptance or refusal are
 5.29 not admissible in evidence at trial.

5.30 Subd. 2. **Correction or clarification.** The fact that a correction or clarification
 5.31 under sections 553A.01 to 553A.10 was made and the contents of the correction or
 5.32 clarification are not admissible in evidence at trial except in mitigation of damages
 5.33 pursuant to section 553A.05. If the fact that a correction or clarification was made or the

6.1 contents of the correction or clarification are received in evidence, the fact of the request
6.2 may also be received.

6.3 Subd. 3. **Offer to correct or clarify.** The fact of an offer of correction or clarification,
6.4 or the fact of its refusal, and the contents of the offer are not admissible in evidence at trial.

6.5 Sec. 11. **[553A.11] SHORT TITLE.**

6.6 Sections 553A.01 to 553A.10 may be cited as the "Correction or Clarification of
6.7 Defamation Act."

6.8 Sec. 12. **EFFECTIVE DATE.**

6.9 Sections 1 to 11 are effective August 1, 2013, and apply to statements published
6.10 on or after that date.